IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION ST.NO.6993 OF 2005
IN
SECOND APPEAL NO.253 OF 2003

1.Babasaheb Dattatraya Thorat and Anr. ..Applicants
Review Petitioners

Versus

1.Vinayak Shripatrao Sathe & ors. ..Respondents

Shri S.N. Chandrachood for applicants
Mr.P.K.Hushing for respondent nos.1 to 5

CORAM : P.V.KAKADE, J.

DATE : 16TH DECEMBER,2005

P.C.:

1. Heard both sides.

2. Rule, rule made returnable forthwith by consent.

3. The present review petition is filed by the petitioner-appellants against the order of dismissal passed by this Court on 5th October, 2004 in Second Appeal No.253 of 2003.

4. After going through the impugned order the

second appeal came to be dismissed in limine in view of the facts and circumstances, I do not see any reason to review the order.

5. The learned counsel for the petitioners submitted that there are factually errors in the order in the sense that there was in fact an admission regarding gratuitous licensee of the concerned person in the evidence and therefore, the findings recorded by this Court to that effect that there was no evidence that holding of the concerned person was licensee cannot stands continue and therefore, the order requires recall. On perusal of the relevant aspect I am satisfied that the said so called admission was not supported by any evidence. Moreover, the ratio laid down by the Supreme Court ruling in Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar reported in 1999 SCC 2213 relied upon by this court in the impugned order stands good for the purpose of the ratio laid down by the Apex Court to the effect that the Second Appeal cannot be decided merely on the equitable grounds. In a case therefrom a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. In view of

this position, I am of the view that the view taken by the lower appellate court was reasonable and based on the available evidence and was definitely not amounting to perversity and therefore, the particular conclusion was drawn and appeal came to be dismissed.

6. Under circumstances the review petition cannot survive and must be dismissed. Hence the review petition is dismissed with no order as to costs.